O. Torts/46

1946

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File No.

Legal Department

A BRANCH

Subject:—

Opinions

Regarding Torts

CP 3/E

C Torts/46

File No.

Gen. 194 e.

415-A

C O N T E N T S.

Le al Department File No. C. Torts/46.

Sr. No.	Compilation No.	Subject.	Pages.
1)	ON. 5566 9-8-45.	Whether a valid and successful claim for damages can be made a ainst the Burma Shell Co.	1-2.
2)	ON 7799 8-11-45.	Whether it is proper for Govt. to render assistance to the Agram in its claim against the Co.	3.

P.N.H. 1/8

N.H.S. 1/8

Office of the P.L.A.

It appears that 180 bags of wheat belonging to Government were lying at Mallet Bunder awaiting shipment. Nearby were subsequently stored 275 drums of diesel oil belonging to the Burma Shell company. Due to heat or perhaps to defective drums oil leaked out and damaged 18 bags of wheat. The Burma Shell Company has disowned responsibility for the damage. The question referred to the P.L.A. for advice is whether a valid and successful claim for damages can be made against the Burma Shell Company.

In Smith v. Great Western Railway Co. (1926, 135 L.T. 112) the facts were:-

An oil tank was consigned by an oil company to a railway company for conveyance to a railway depot. On arrival at the depot the tank was found leaking and a large quantity of oil penetrated into a warehouse on plaintiff's premises, rendering water unfit for plaintiff's cattle to drink. On the leakage being discovered by the railway company's servants, every effort was made by the railway company to stop it. Plaintiffs sued the oil company and the railway company for damages for nuisance arising from the pollution of the watercourses It was held:-

(1) The oil company were liable as they ought by exercise of reasonable care to have discovered the defective condition of the tank before consigning it by rail;

(2) The railway company were not liable, as they did not in any way permit the continuance of the nuisance and as the damage was caused by the wrongful act of a third party namely the oil company in sending a defective tank to the railway company's premises.

It appears that the ratio decidendi of that decision applies to the present case and a valid claim for damages can be made against the Burma Shell Company. The question whether or not the Burma Shell Company has exercised reasonable care being one of fact, it is difficult to say what view the Court is likely to take on evidence; but prima facie there appears to be a good case for Government.

Sd/- 7/8

Remembrancer of Legal Affairs.

U.O.F. to C.S.D. No. 5566 dated the 9th August 1946.

N. W. D.
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4c.

Office of the F.L.A.

It appears that on the 5th of April 1945 a part of the property belonging to the Masur Brahmacharya Ashram at Amernath suffered damage by fire which had broken out in an adjoinging plot of land occupied by the military authorities and where some labourers employed by the Hindustan Construction Company were found working at the time. It is not clear from the papers whether the Hindustan Construction Company were working on behalf of the Military authorities or on their own . The Collector of Thana is unable to throw any light on the real cause of the fire. But his inquiry shows that the fire was accidental, and that there is no foundation for the allegation that it was the result of deliberate mischief. If, as suspected, the fire was caused by the negligence of the labourers of the Hindustan Construction Company, it is for the Ashram authorities, if so advised, to the file a suit against the Company claiming damages for the loss caused by the fire. The issued involved in the dispute are of a civil nature between two private parties, and it would hardly be proper for Government to render any assistance to the Ashram in its claim against the Company.

Sd/- 7/11

Remembrancer of Legal Affairs.

U.F. to F.D. No. 7799, dated the 8th November 1946.

N.V.D.
11/7
4c.